* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: MARCH 7, 2007
Date of Decision : April 18, 2007

\+ W.P.(C) 11050/2005

NEW DELHI MUNICIPAL COUNCIL ..... Petitioner
Through Mr. P.C. Sen, Advocate

versus

ANIL KUMAR KHANNA ..... Respondent
Through Mr. Vineet Maheshwari, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

:Dr. S.Muralidhar, J.

1. This writ petition filed by the New Delhi Municipal Council (NDMC) challenges an order dated 7.12.2004 passed by Additional District Judge (ADJ) Delhi in House Tax Appeal No. 375 of 2004. By the impugned judgment the learned ADJ allowed the appeal filed by the respondent herein against an assessment order dated 5.8.2004 passed by the Assessing Officer re-fixing the rateable value in respect of the property at 9, Jor Bagh, Delhi retrospectively from 1.6.1995 at Rs. 5,15,000 and from 1.9.2002 at Rs. 26,55,500.

2. The Respondent is the sole owner of the property in question. Beginning 1.6.1995 the Respondent permitted Bharti Cellular Ltd. to install a cellular antenna on the terrace of the Annexe to the building

on a monthly rent of Rs. 36,000. The petitioner claims that the respondent failed to disclose this information in response to a notices issued to him under Section 77 of the New Delhi Municipal Council Act 1994 ('NDMC Act') for the assessment years 1998-99 and also 1999-2000. In reply to both these letters the petitioner disclosed that the property was a self-occupied property and that there has been no addition or alteration in the property. On 2.8.2000 the petitioner was issued a letter which stated that it had been noticed that a cellular antenna had been installed on the rooftop of the house and the respondent was asked to intimate the monthly rent being charged from the company. In response to this letter on 20.9.2000 the respondent stated that "there is antenna installed on part of the terrace of the servant quarter by M/s Bharti Cellular Limited who are paying a sum of Rs. 36,000 per month towards the licence fee". Thereafter in the self-assessment form filed on 31.10.2000 the respondent indicated that the tenant from 1.6.1995 was Bharti Cellular Ltd. and from 1.9.2002 the World Health Organisation. On the basis of this information, the Assessing Officer (AO) revised the rateable value retrospectively as indicated in para 1 hereinabove.

3. The contention of the petitioner is that there was a willful suppression of the above fact by the petitioner in response to the earlier notice under Section 77 and under Section 77 (3) of the Act if there is a failure to give information then in addition to penalty, the assessee would be precluded from objecting to any assessment made by the Chairperson in respect of such land or building of which he is the owner or occupier. Accordingly it is claimed by the NDMC that no fresh notice under section 72(2) was necessary for re-fixing the

rateable value with a retrospective effect from 1.6.1995.

4. The learned ADJ held that the requirement of giving a prior notice under section 72 (2) of the Act could not be dispensed with. On the analogy of the provisio to Section 72, the learned ADJ held that the self-assessment proforma filed under Section 77 of the Act "is not to relate to the period prior to the period for the purposes of which the return has been filed".

5. The contention of the learned counsel for the petitioner is that there is no limitation as such for invoking the powers under Section 77 (3) of the Act. Once it is established that there has been a failure by the assessee to give information, it would be open to the NDMC to revise the rateable value even for a period prior to the period for which a self-assessment form has been filed by the assessee. The petitioner also seeks to rely upon a declaration appended to the assessment form filed by the petitioner to the effect that: "the above information is correct to the best of my knowledge and belief and assessment be finalized on the above basis. If the information is found to be incorrect, I would not object to its correction on the basis of correct information so received by the Department. Right to receive notice under Section 72 is, hereby waived." In support of this proposition reliance is placed on the decision in ***Dawsons Bank Ltd. vs. Nippon Menkwa Kabushihi Kaish*** AIR 1935 PC 79.

6. On behalf of the respondent it is contended that it was only in August 2000 that the NDMC adopted a policy of charging rateable value on the basis of the rent collected for letting out space for

installation of antennas on the rooftops of houses. Considering the fact that when antennas first began to be installed on the rooftops of buildings it was known to the NDMC which chose not to revise the rateable value on that basis, it cannot be said that there was any willful suppression of fact. When for the first time on 2.8.2000 the NDMC sought information under Section 77, the respondent promptly furnished a reply.

7. Reliance is placed on Section 72 (2) which states that the assessee "shall not be liable to pay any tax or increase in tax due to the amendment in the assessment list, for any period prior to the first day of the financial year in which this notice has been issued." It is further contended that when initially a notice was issued by the petitioner proposing to revise the rateable value, the respondent replied on 22.11.2000 stating that the revision could not be done for a year previous to the year in which assessment was being made. When an assessment order was passed on 14.2.2004 fixing the rateable value at 4,32,000/- less 10%, the petitioner raised a supplementary bill for a sum of Rs. 3,49,920 and this was duly paid by the respondent. Thereafter when the respondent let out the property to the World Health Organisation, it gave this information and on this basis the rateable value was revised and a bill raised, which the respondent paid. It is claimed that having accepted the rateable value on both these occasions and raised bills, no occasion arose for the petitioner to revise the rateable value for a period retrospective from 1995.

8. The first contention concerns the respondent having waived the

right to receive a notice under Section 72 in the vent of failing to furnish information under Section 77. Sections 72 and 77 of the Act read as under:

"72. **Amendment of assessment list.**-- (1) The Chairperson may, at any time, amend the assessment list--

(a) by inserting therein the name of any person whose name ought to be inserted; or

(b) by inserting therein any land of building previously omitted; or

(c) by striking out the name of any person not liable for the payment of property tax; or

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) by making or cancelling any entry exempting any land or building from liability to property tax; or

(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or

(g) by inserting or altering an entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment list:

Provided that so person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the notice under sub-section (2) is given.

(2) Before making any amendment under sub-section (1) the Chairperson shall give to any person affected by the amendment, notice of not less than once month that he proposes to make the amendment and consider any objection which may be made by such person."

Section 77 (3) reads as under:

> "77(3) Whoever omits to comply with any such requisition or fails to give true information or to make a true return to the best of his knowledge or belief, shall, in addition to any penalty to which he may be liable, be precluded from objecting to any assessment made by the Chairperson in respect of such land or building of which he is the owner or occupier."

9. A reading of the above two provisions show that the right under Section 72(2) does not in any way get diluted or obliterated by the conditionality attached to Section 77(3). In other words, Section 77(3) not being a *non-obstante* clause, must be read along with Section 72(2) which encapsulates a rule of natural justice. It gives a party the right to receive a notice before an assessment is sought to the amended. That cannot possibly be said to have been waived by the respondent when it filed the self-assessment form. The inviolability of a rule of natural justice would render such a declaration void and non enforceable in a court of law. The contention based on the judgment in ***Dawsons Bank Ltd.*** is, in the view of this court, misconceived. That judgment did not deal with the waiver of a statutory right of a party.

10. Turning to the facts of the present cases admittedly it was only in August 2000 that the NDMC adopted a policy of revising the rateable value of buildings where antennas are installed on rooftops on the basis of the rent received for that purpose. When for the first time the petitioner sought information regarding such installation, the respondent complied with that request. Merely because the respondent did not indicate that the rent for the purpose was received

from 1995 onwards, cannot be said to amount to a suppression of information. That would have made no difference to the NDMC since in any event till 2000 it had not been fixing the rateable value on that basis.

11. The respondent filed the self-assessment form indicating the date from which it had let out the rooftop for the purposes of the antenna. In those circumstances, it again cannot be said to be an omission to supply an information from a prior date. As rightly pointed out by the respondent, the NDMC having twice raised bills after the furnishing of such information and having not revised such bills and accepting the payment of the respondent against such bills, cannot now be heard to say that there was any a wilful suppression of information in terms of section 77(3) of the Act.

12. The contention of the respondent that section 77(3) does not give an open-ended time frame for completion of the revision of assessment also merits acceptance. The specific wording of section 72(2) read with section 77(3) would seem to indicate that the time limit has to be reasonable and in any event not earlier than the period for which the notice is issued under section 72(2).

13. For all of the above reasons this court is of the considered view that there is no error vitiating the impugned order of the learned ADJ. The writ petition is dismissed with no orders to costs.

S. MURALIDHAR, J.

APRIL 18, 2007
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